United Nations CAT/C/53/D/470/2011*

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
19 January 2015

Original: English

Committee against Torture

Communication No. 470/2011

Decision adopted by the Committee at its fifty-third session (3–28 November 2014)

Submitted by:	X. (represented by counsel, Monique Bremi)
Alleged victim:	The complainant
State party:	Switzerland
Date of complaint:	15 July 2011 (initial submission)
Date of present decision:	24 November 2014
Subject matter:	Deportation to the Islamic Republic of Iran
Procedural issues:	None
Substantive issues:	Risk of torture upon return to the country of origin
Articles of the Convention:	3
	[Annex]

* Reissued for technical reasons on 3 February 2015.

GE.15-00596 (E)

1500596

Please recycle

Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-third session)

concerning

Communication No. 470/2011

Submitted by:	X. (represented by counsel, Monique Bremi)
Alleged victim:	The complainant
State party:	Switzerland
Date of complaint:	15 July 2011 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 24 November 2014,

Having concluded its consideration of complaint No. 470/2011, submitted to the Committee against Torture on behalf of X. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainant is X., an Iranian national born in 1986. His asylum application was rejected in Switzerland and, at the time of submission of the complaint, he was awaiting expulsion to the Islamic Republic of Iran. He claims that his expulsion to the Islamic Republic of Iran would constitute a violation, by Switzerland, of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainant is represented by counsel, Monique Bremi from Beratungstelle für Asyl- und Äuslanderrecht.

1.2 On 20 July 2011, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party to refrain from expelling the complainant to the Islamic Republic of Iran while his complaint was considered by the Committee. On 27 July 2011, the State party informed the Committee that the Federal Office for Migration had requested the competent authorities to stay the execution of the expulsion order in relation to the complainant until further notice.

The facts as submitted by the complainant

2.1 The complainant was an accounting student at the Free University in Tehran. He helped organize demonstrations against the regime's plans to build nuclear weapons and to attack Israel. After one such event, the Herrassat, the Office for Surveillance of Universities, warned him that he "talked too much". He was accused of being a "counterrevolutionary". In 2007, he was expelled from the university, allegedly for two failed examinations. He did not receive a formal decision to that effect. He claims that he had always been an excellent student and that the examination results had been forged with the aim of expelling him from the university.

2.2 Following the re-election of President Ahmadinejad in June 2009, the complainant participated in several demonstrations against him. On 27 December 2009, he participated in a protest march in Tehran. The police and Basij militia[1] dispersed the demonstrators. At around 1 p.m., the complainant was arrested by two Basij officers, handcuffed, and brought to a van, together with other demonstrators. His mobile phone and personal belongings were confiscated. The complainant and another demonstrator managed to escape from the van when the back door was open. Thanks to the complainant's karate skills, they managed to overpower the two Basij officers and to disappear into the crowd.

2.3 After that incident, the complainant hid at his grandmother's house. The very same day, officials searched his parents' house and seized his laptop, passport, driving licence, military exemption and nationality certificates and a number of banned publications from a room he shared with his brother. The publications belonged to his brother. On 30 December 2009 and 3 January 2010, the house was searched again by officials, who told the complainant's father that the complainant was to be prosecuted for "injuring an official on duty, possessing banned publications and fomenting unrest". His father was also told that the complainant would be sentenced to death and that the penalty could be alleviated against a payment of 100 million toman. The complainant's parents were compelled to provide the contact details of all their relatives.

2.4 On 3 January 2010, the complainant left his grandmother's house for Zandjan province, where he stayed until 20 March 2010. In the meantime, a summons from the Revolutionary Tribunal, Chamber 7, was sent to his parents' house in Tehran and an arrest warrant was issued. From 20 March 2010 to 10 August 2010, the complainant hid in Babol, Mazandaran province. On 12 August 2010, he left the Islamic Republic of Iran illegally by boat.

2.5 On 20 August 2010, he arrived in Switzerland and requested asylum. At asylum interviews, held on 6 and 23 September 2010, the complainant provided the Swiss authorities with his identity card, his karate certificate and the summons from the Revolutionary Tribunal.

2.6 On 27 October 2010, the Federal Office for Migration (BFM) rejected the complainant's application on the grounds of lack of credibility and ordered his removal to the Islamic Republic of Iran. On 20 June 2011, the Federal Administrative Tribunal ("the administrative tribunal" (BVG)) rejected his appeal.

2.7 The administrative tribunal found that the complainant's account was unrealistic, insufficiently detailed and inconsistent. First, it appeared incredible that he had first indicated that he had been held in the van for 10 minutes but had later stated that his detention had lasted almost 30 minutes. Furthermore, he had maintained that he had been

[1] Paramilitary volunteer militia established in 1979 by order of the leader of the Islamic Revolution, Ayatollah Khomeini. The force consists of young Iranians who volunteer, often in exchange for official benefits.

hit on the head three or four times, approximately every 10 to 15 minutes, while in the van. Second, the administrative tribunal found it unrealistic that his handcuffs had been removed in the van and that he had been able to overpower two officers and escape. Third, it appeared incredible that his brother's banned material had been stored in their shared room and that the brother had not been held accountable in that connection. Fourth, the complainant had failed to explain why he had kept all his identity documents, except his identity card, in one single bag, which could be interpreted as if he had tried to hide his actual itinerary from the authorities. Fifth, it appeared incredible that the officials who had searched his parents' house had been able to influence his sentence. Sixth, the summons submitted to the Swiss authorities had no evidential value, as it could easily have been forged and purchased in the Islamic Republic of Iran. Finally, even if the complainant had left the Islamic Republic of Iran illegally, as alleged, there was no risk of him being subjected to ill-treatment or persecution in his country of origin.

2.8 With reference to reports by international non-governmental organizations, the complainant maintains that the human rights situation in the Islamic Republic of Iran has been critical, particularly after the 2009 presidential elections. In 2011 alone, 300 persons were executed. The Committee itself has stated that the human rights situation was "extremely worrisome".[2] He further claims that he had been excluded from university on the basis of his political activities, however the Swiss authorities did not assess the credibility of that information. He had participated in various demonstrations after the June 2009 elections but had not been arrested until December 2009. His account to the authorities, regarding the December 2009 demonstration and his subsequent arrest, including the persons involved, was vivid, detailed and without contradictions. A representative of a non-governmental organization who was present at the asylum interview found his statements credible and reported that he had described the officers' appearance without hesitation.

2.9 On the points raised by the administrative tribunal, the complainant submits that he had lost track of time when he was brought to the van, because of emotional distress caused by the arrest, handcuffing and beatings by the officials. He argues that the alleged inconsistency in the description of the length of his detention does not undermine the credibility of his account. He explains that he had been released from handcuffs like other arrestees who had been forced to lie on the floor in the van. He submits that, using karate techniques, he had knocked down an officer, who, because of acute pain, had not followed him when he had escaped from the van. Furthermore, Iranians have access to and frequently consult banned publications, as confirmed by governmental and non-governmental sources. It was not unusual, therefore, that his brother's incriminating material had been kept in their parents' house. In addition, the complainant had expected to destroy that material but the authorities had searched the house before he could do so. He explains that his father had kept his identity card to apply for subsidized goods. He further argues that it is generally known in the Islamic Republic of Iran that possessing banned material is punishable by death. It is not unusual that, in the context of widespread corruption in the Islamic Republic of Iran, the officials, who had searched the parents' house, had attempted to bribe his father, by invoking the likely sentence for the complainant. Since his father had not yielded to the offer, the complainant's statement in that connection has no bearing on his credibility. He submits that, apart from the summons submitted to the Swiss authorities, he had no other evidence to demonstrate that he had been wanted by the Iranian authorities, as arrest warrants are normally not handed over to suspects. Nothing indicates that the summons is not authentic: according to Amnesty International, forged documents are rarely used in the Islamic Republic of Iran, and the

[2] Communication No. 357/2008, *Jahani* v. *Switzerland*, decision adopted on 23 May 2011, para. 9.4.

address indicated on the summons is commonly used as the nearest reference to his exact address. The complainant also submits that leaving the Islamic Republic of Iran illegally is punishable by up to three years' imprisonment or a fine, and would lead to his combined prosecution, also on the charges brought against him prior to his departure from the Islamic Republic of Iran, and possibly, to a heavier sentence.[3]

The complaint

3.1 The complainant argues that his forcible return to the Islamic Republic of Iran would constitute a breach, by Switzerland, of its obligations under article 3, paragraph 1, of the Convention. He submits that he repeatedly expressed critical views against the Iranian regime and that he was arrested, on 27 December 2009, during a demonstration against the regime then in place. He was accused of fomenting unrest, possessing banned material and injuring an official. In this connection, he faces a long prison sentence and, possibly, capital punishment in the Islamic Republic of Iran. Torture is widespread in Iranian prisons; a study by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment stated that there were credible allegations that the country's security forces committed politically motivated torture following demonstrations in 2009.[4] Furthermore, since he left the Islamic Republic of Iran illegally and is a failed asylum seeker,[3] he will be particularly exposed to persecution upon return.

3.2 In the light of the above, the complainant claims that, if returned to the Islamic Republic of Iran, he would face a real and imminent risk of being subjected to treatment contrary to the Convention.

3.3 In his further submissions, the complainant contended that his adoption of atheistic and agnostic views constitutes an additional risk for him, if he were deported to the Islamic Republic of Iran, as abandonment of Islam can be punishable by death there.[5]

State party's observations on admissibility and on the merits

4.1 On 18 January 2012, the State party submitted its observations on the merits. It recalls the facts of the case and the asylum proceedings pursued by the complainant in Switzerland. It notes that the asylum authorities gave due consideration to his arguments. It states that the present communication does not present any new elements that would call into question the decisions of the asylum authorities.

4.2 The State party recalls that, under article 3 of the Convention, States parties are prohibited from expelling, returning or extraditing a person to another State where there exist substantial grounds for believing that he or she would be subjected to torture. To determine the existence of such grounds, the competent authorities must take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. With reference to the Committee's general comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22, the State party adds that the complainant should establish the existence of a "personal, present and real" risk of being subjected to torture upon return to the country of origin. The existence of such a risk must be assessed on grounds that go beyond mere theory or suspicion. Additional grounds must exist in order for the risk of torture to qualify as real. The following elements must be taken

[3] United Kingdom Border Agency, "Iran: country of origin information report", 28 June 2011, para. 31.21 (f).

[4] United States Department of State, "2010 country reports on human rights practices – Iran", 8 April 2011.

[5] See para. 5.8 below.

into account in assessing the existence of such a risk: evidence of a consistent pattern of gross, flagrant or mass violations of human rights in the country of origin; allegations of torture or ill-treatment sustained by the complainant in the recent past, and independent evidence thereof; political activity of the author within or outside the country of origin; evidence as to the credibility of the author; and factual inconsistencies in the claim of the complainant.[6]

4.3 With regard to the existence of gross, flagrant or mass violations of human rights, the State party submits that this is not in itself a sufficient basis for concluding that an individual might be subjected to torture upon his or her return to the country of origin. The Committee should establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would return.[7] Additional grounds should be adduced for the risk of torture to qualify as "foreseeable, real and personal" under article 3, paragraph 1, of the Convention.[8] The risk of torture must be assessed on grounds that go beyond mere theory or suspicion.[9]

4.4 Although the State party concedes that the human rights situation in the Islamic Republic of Iran is preoccupying, it reiterates that this is not in itself sufficient grounds for concluding that the complainant might be subjected to torture in the event of his removal. It argues that the complainant has failed to demonstrate that he would face a foreseeable, real and personal risk of being subjected to torture, if returned.

4.5 On the question of allegations of torture or ill-treatment sustained in the recent past, and the existence of independent evidence thereof, the State party underlines that the complainant has not claimed to have been subjected to torture or ill-treatment in the past. Although he claimed before the asylum authorities that he had been hit in the van after his arrest on 27 December 2009, he has not mentioned this in his communication to the Committee. In addition, the asylum authorities found his account incredible.

4.6 On the question of political activities pursued by the complainant, the State party notes that, before both the Swiss asylum authorities and the Committee, the complainant argued that because of his political activities during his student years, he had been expelled from university, that he had participated in anti-presidential demonstrations after June 2009, and that he had been arrested at the protest rally on 27 December 2009. The asylum authorities duly examined his allegations and found that they lacked credibility, particularly as they doubted that he had left the Islamic Republic of Iran on account of his involvement in the December 2009 protests. Furthermore, the complainant has not explained how his former political activities would have exposed him to the risk of being subjected to torture upon return to the Islamic Republic of Iran. Neither has he claimed to have been subjected to such treatment in the Islamic Republic of Iran as a result of his political activities.

4.7 With regard to the credibility of the complainant and the factual consistency of his claims, the Swiss asylum authorities established that the complainant's account was implausible. In particular, they found it unrealistic that the complainant would attack the officials, as he had submitted, because they had harassed women and children during the 27 December 2009 demonstration. His allegations regarding the arrest in the van also appeared unrealistic. Whereas at the first asylum interview, on 6 September 2010, he had submitted that the officers had counted the arrestees in the van every 15 minutes, at a later stage he had submitted that his arrest had lasted 10 minutes only. Furthermore, at the second asylum

[6] General comment No. 1, para. 8.

[7] Communication No. 94/1997, *K.N.* v. *Switzerland*, Views adopted on 19 May 1998, para. 10.2.

[8] Ibid., para. 10.5; and communication No. 100/1997, *J.U.A.* v. *Switzerland*, Views adopted on 10 November 1998, paras. 6.3 and 6.5.

[9] General comment No. 1, para. 6.

interview, he had submitted that the officers had counted arrestees every 10 to 15 minutes, that they had kicked him three or four times and that his arrest had not exceeded 30 minutes. The complainant had replied to the questions regarding the length of his arrest without hesitation, without mentioning any potential emotional distress he would have experienced while signing the transcript of the first asylum interview.

4.8 Moreover, the asylum authorities found that the complainant's allegations of the kicks inflicted by the officer on the arrestees in the van and his escape therefrom were superficial in the circumstances. Furthermore, it did not appear credible that the arrestees, including the complainant, had been released from handcuffs, as that could have increased their escape risk. In addition, at the first asylum interview, the complainant had not mentioned that his handcuffs had been removed. The complainant's description of the escape from the van appeared incredible, particularly given the risk that he would have been running by fighting the officer in the van and his statement that the other arrestees had remained in the van after his and the other demonstrator's escape. He had failed to explain how they could have passed through the officers who were patrolling outside the van.

4.9 The State party submits that the asylum authorities considered it incredible that the complainant's brother's banned material had been stored in their shared room, despite the alleged political activities of the complainant and his bad reputation with the Iranian authorities. It also found it implausible that his brother had not experienced problems with the authorities and that the complainant did not know where his brother had obtained the banned publications. Furthermore, the complainant has not provided any plausible explanation to the Committee as to why he had not made arrangements to destroy the banned material and to get hold of his travel documents before the officials searched his parents' house. The conduct of the officials during the search appears unrealistic, especially their alleged threats against the complainant's father, given the complainant's failure to explain how they could have influenced the proceedings against him. Neither did the complainant provide a plausible explanation as to why all his documents had been kept in one single bag, except for his identity card which had allegedly been kept by his father. According to the asylum authorities, the complainant did not wish to show his identity documents to the asylum authorities, as the documents would indicate the actual date of his departure from the Islamic Republic of Iran and his travel itinerary.

4.10 Furthermore, the asylum authorities considered that the complainant's allegations were unsubstantiated. He had failed to explain the origin of his brother's banned publications, and had not provided a detailed description of the demonstrator with whom he had escaped from the van, or of the officer who had administrated kicks to them in the van. Furthermore, he had not provided a sufficiently detailed description of the three visits by officials to his parents' house, particularly of his parents' behaviour during those visits.

4.11 The asylum authorities considered that the summons of the Revolutionary Tribunal had no evidentiary value, as such documents could be easily falsified in the Islamic Republic of Iran. The complainant had not provided other judicial documents, which could be more difficult to forge. The address indicated on the summons was different from the address he had indicated at the asylum interviews. The complainant had specified neither the contents of the summons nor when he had received it, nor when he had familiarized himself with its contents, although he had allegedly discussed those details in a telephone conversation with his father. Given that summons are generally issued in the middle of proceedings, the complainant had not explained what had happened to other procedural documents, which should have been issued at an earlier stage of the proceedings, such as a notification for questioning by the police, by an investigating magistrate or by the Ministry of the Interior. Yet, in the Islamic Republic of Iran, indictment by the Ministry of the Interior, as was alleged in the complainant's case, is preceded by investigation. The State party submits that the conclusions of the asylum authorities cannot be overturned by the

complainant's argument that forged documents were rarely used in the Islamic Republic of Iran, that arrest warrants are normally not handed over to suspects, and that the address indicated on the summons is commonly used as the nearest reference to the exact address.

4.12 Furthermore, the asylum authorities stated that the complainant had failed to indicate his exact travel itinerary, which was unusual from him as a student. His account lacked personal details, including regarding the charges against him in the Islamic Republic of Iran, which normally should have prompted him to take the necessary personal security measures. Moreover, it had never been alleged, in the course of the asylum proceedings, that the complainant had suffered from post-traumatic stress disorder or that such disorder had caused a divergence in his statements to the asylum authorities.

4.13 The asylum authorities established that the complainant had failed to prove that he had left the Islamic Republic of Iran illegally. The State party submits that the lack of credibility of his allegations of persecution confirms that conclusion. Furthermore, even if the complainant had demonstrated that he had departed from his country of origin illegally and that his asylum application had been brought to the attention of the Iranian authorities, this would not be sufficient, per se, to conclude that he would be at risk of being subjected to ill-treatment or persecution in his country of origin.

4.14 The State party submits that, in the light of the foregoing, there are no substantial grounds to fear that the complainant would be concretely and personally exposed to torture if he were returned to the Islamic Republic of Iran. His allegations and the evidence provided do not allow the conclusion to be drawn that his return would expose him to a foreseeable, real and personal risk of torture. The State party, therefore, invites the Committee to find that the return of the complainant to the Islamic Republic of Iran would not constitute a violation of the international obligations of Switzerland under article 3 of the Convention.

Complainant's comments on the State party's observations, and further submissions

5.1 On 3 April 2012, the complainant presented his comments on the State party's observations. He reiterates that his deportation to the Islamic Republic of Iran would expose him to a real and personal risk of being subjected to arrest and torture, particularly in the light of his repeated criticism of the Iranian political regime, his belonging to a group of politically active students, his expulsion from university, his accusation of fomenting unrest, his participation in demonstrations against the Iranian Government, his arrest during the demonstration of 27 December 2009 and his escape by injuring an official, his possession of banned material, the arrest warrant against him, the summons against him by the Revolutionary Tribunal, and his asylum request in Switzerland. He underlines that he provided a detailed description of the events to the asylum authorities. His statements are highly credible and plausible, especially in the light of his personal situation and the general situation in the Islamic Republic of Iran, and cannot be considered superficial, contrary to the State party's assertion.

5.2 The complainant refers to independent reports to underline the seriousness of human rights concerns in the Islamic Republic of Iran, notably the persecution of political opponents and the ever-increasing number of arrests and public executions, as well as the arrests and ill-treatment of failed asylum seekers. Iranians who left the country illegally are systematically questioned upon return and can be detained for up to seven days and/or brought before the special court in Merhabad Airport in Tehran, which can sentence them to two years' imprisonment for having left the country illegally. The European Court of Human Rights found that deportation to the Islamic Republic of Iran, given the country's

human rights situation and the specific risk for Iranians returning to their home country in circumstances where they cannot produce evidence of their lawful departure from the country, would violate article 3 of the European Convention on Human Rights.[10] The complainant therefore refutes as unsubstantiated the State party's argumentation about the absence of a risk to him of being subjected to persecution or ill-treatment on the grounds that had left the country illegally, if he were to be deported.

5.3 He also challenges the State party's argumentation that his submissions lack substantiation. He argues that he had attacked officials during the December 2009 demonstration as a young, politically involved student with excellent karate skills who was willing to take the risk to defend women and children against harassment. He submits that the State party's arguments are ill-founded, as they do not meet the requirement for evaluation of the credibility of evidence used by the administrative tribunal. According to the tribunal's practice, statements made by asylum seekers may not be contested solely on the basis of presumption or alleged contradiction, without further substantiation by the asylum authorities, with a view to shifting the responsibility for providing irrefutable evidence to asylum seekers. It is not allowed for the burden of proof only to be on the side of the applicant.[11]

5.4 The complainant disputes the State party's argumentation that the summons of the Revolutionary Tribunal is not authentic, to the extent that this argumentation contradicts the findings of the administrative tribunal in another case: "Although the Federal Office for Migration doubts the authenticity of the evidence, it has not provided any element to support such conclusions. Furthermore, by reason of the principle of free evaluation of evidence applicable in the administrative proceedings, it cannot be considered that a photocopy has been manipulated or is devoid of evidentiary value merely because of its form, as long as its authenticity has been demonstrated by the applicant."[12]

5.5 With reference to a report by Amnesty International, the complainant refutes the State party's argumentation regarding the stages of criminal proceedings in the Islamic Republic of Iran. He submits, in particular, that many of those arrested, particularly political dissidents, are arrested without a warrant. The lack of transparency with which agencies have the right to carry out arrests facilitates abuses and impunity. Most trials in the Islamic Republic of Iran are grossly unfair, particularly those before Revolutionary Courts. Judges presiding over political cases in such courts are in fact mercenaries responsible for the execution of security policies of the regime.[13] The complainant reiterates that an arrest warrant in the Islamic Republic of Iran is presented as an authorisation for arrest or search, rather than being sent to, or served on, the person concerned. The manner in which the search of his parents' house was conducted demonstrates that the authorities had been well informed about him.

5.6 The complainant confirms that he has not alleged having suffered from post-traumatic stress disorder and rejected offers of psychological assistance during the asylum proceedings. However, psychological studies show that discrepancies in submissions between interviews are common among asylum seekers, even in the absence of post-traumatic stress disorder. Discrepancies are likely to arise when details required are peripheral to interviewees' experience and when the contents are traumatic to them. Such

[10] European Court of Human Rights, judgement No. 41827/07 of 9 March 2010, *R.C.* v. *Sweden*, paras. 56 and 57.

[11] Samuel Werenfels, *Der Begriff des Flüchtlings im schweizerischen Asylrecht* (Bern, 1987), p. 135.

[12] See the administrative tribunal's case E-5292/2006.

[13] Amnesty International, *We Are Ordered to Crush You: Expanding Repression of Dissent in Iran* (February 2012), p. 21.

discrepancies are present in many asylum applications and there is a mounting risk of finding that asylum seekers have fabricated their statements, solely on the basis of discrepancies between interviews, and of making incorrect judgements.[14]

5.7 The complainant concludes that there is no well-founded reason to doubt his statements and that his description of the events is precise and highly credible. Therefore, in the light of his personal situation and the human rights situation in the Islamic Republic of Iran, he has a well-founded fear of being subjected to torture, if forcibly returned to the Islamic Republic of Iran.

5.8 On 24 October 2013, the complainant submitted a statement by the Iranian Public Prosecutor, dated 22 July 2013, saying that persons who had left the country in connection with the events of 2009 would be detained upon entry and prosecuted upon return. The complainant also states that he has been actively supporting atheistic and agnostic views and has translated three atheistic videos from English into Farsi. These videos are not available online. He claims that his atheistic and agnostic views, in addition to his previous submissions and the banned publications found in his parents' house during the search of 27 December 2009, enhance his well-founded fear of prosecution, if deported to the Islamic Republic of Iran. He explains that apostasy or abandonment of one's religious faith — Islam, in his case — can be punishable by death in the Islamic Republic of Iran.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 The Committee recalls that, in accordance with article 22, paragraph 5 (b), of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the instant case, the State party has contested neither the exhaustion of all available domestic remedies by the complainant nor the admissibility of the complaint.

6.3 The Committee considers that the complaint raises substantive issues under article 3 of the Convention and that those issues should be examined on the merits. As the Committee finds no obstacles to the admissibility, it declares the communication admissible.

Consideration of the merits

7.1 In accordance with article 22, paragraph 4, of the Convention, the Committee has considered the present communication in the light of all information made available to it by the parties concerned.

7.2 With regard to the complainant's claim under article 3 of the Convention, the Committee must evaluate whether there are substantial grounds for believing that he would be personally in danger of being subjected to torture, should he be returned to the Islamic

[14] See Jane Herlihy, Peter Scragg and Stuart Turner, "Discrepancies in autobiographical memories – implications for the assessment of asylum seekers: repeated interviews study", in *BMJ*, vol. 324 (9 February 2002). Available from http://www.ncbi.nlm.nih.gov/pmc/articles/PMC65293/.

Republic of Iran. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not, as such, constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

7.3 The Committee recalls its general comment No. 1, according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being "highly probable", the Committee notes that the burden of proof generally falls on the complainant, who must present an arguable case that he or she faces a "foreseeable, real and personal" risk.[15] The Committee further recalls that, in accordance with its general comment No. 1, it gives considerable weight to findings of fact that are made by organs of the State party concerned,[16] while at the same time it is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.

7.4 In assessing the risk of torture in the present case, the Committee notes the complainant's contention that there is a foreseeable, real and personal risk that he will be persecuted, tortured, and eventually sentenced to death and executed, if returned to the Islamic Republic of Iran, based on his past political activities there, his illegal departure from the country, his failed asylum application, and his atheistic and agnostic views and related activities as pursued in Switzerland. It also notes the State party's observations concerning the complainant's lack of credibility, in particular the doubts regarding his departure from the Islamic Republic of Iran because of his alleged involvement in the December 2009 protests. It notes that the State party's concerns are based on, inter alia: his allegedly unrealistic description of the reasons for his attacking the officials during the demonstration of 27 December 2009, as well as of his arrest and escape; the discrepancy in his description of the duration of his detention in the police van; the allegedly unrealistic statements, made by the officials during the search of his parents' house, regarding the grounds for his prosecution; the alleged inauthenticity of the summons by the Revolutionary Tribunal; and his failure to indicate his exact travel itinerary and to prove that he had left the Islamic Republic of Iran illegally. The Committee also notes the State party's argumentation to the effect that the complainant had not been tortured in the Islamic Republic of Iran, which has not been challenged by the complainant.

7.5 Referring to its recent jurisprudence,[17] the Committee recalls that there are continuing reports regarding the use of psychological and physical torture to solicit confessions in the Islamic Republic of Iran, which indicate the widespread and systematic

[15] See, inter alia, communication No. 203/2002, *A.R.* v. *Netherlands*, decision adopted on 14 November 2003; and communication No. 258/2004, *Dadar* v. *Canada*, decision adopted on 23 November 2005.

[16] See, inter alia, communication No. 356/2008, *N.S.* v. *Switzerland*, decision adopted on 6 May 2010, para. 7.3.

[17] See communication No. 481/2011, *K.N., F.W. and S.N.* v. *Switzerland*, decision adopted on 19 May 2014; *Jahani* v. *Switzerland*; and communication No. 381/2009, *Faragollah et al.* v. *Switzerland*, decision adopted on 21 November 2011.

use of such practices.[18] The Committee does not have information that this situation has significantly improved since the change in leadership in 2013.[19] In this regard, the Committee takes into consideration ongoing reports of incidents of the detention and torture of political opponents.[20] The Committee considers that this is all the more worrying in the light of the fact that the Islamic Republic of Iran frequently administers the death penalty, including public executions of political prisoners,[21] and applies it without due process and in cases involving certain crimes that do not meet international standards for "most serious" offences.[22] The Committee notes that the State party itself has recognized that the human rights situation in the Islamic Republic of Iran is preoccupying.[23]

7.6 In the present case, the Committee notes the complainant's claims that he was expelled from university on account of his political views, that he was arrested by the Iranian police and detained and beaten in a van during the 27 December 2009 demonstration against the regime in power, that his parents' house was searched subsequently on three occasions in that connection and that officials confiscated banned publications therefrom, that he left the Islamic Republic of Iran illegally fearing persecution, that the Revolutionary Tribunal summoned him, that he sought asylum in Switzerland but his asylum application was rejected, and that he has adopted atheistic and agnostic views and translated related publications into Farsi while in Switzerland. The Committee notes the complainant's submissions that those elements demonstrate the existence of a real and personal risk of torture, should he be returned to the Islamic Republic of Iran. The Committee also notes that the State party challenges the complainant's credibility based on factual discrepancies, the lack of details, and his failure to prove the authenticity of the summons, for example by producing an arrest warrant in his name. The Committee recalls its jurisprudence that such inconsistencies and lack of details as may exist in the author's presentation of the facts are not material and do not raise doubts about the general veracity of the author's claims.[24] The Committee further notes that it does not appear from the material on file that any verification of the summons has been conducted by the State party's competent authorities. In addition, pursuant to the information contained in the 2014 report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, 69 per cent of Iranian detainees interviewed stated that they had been arrested without warrants or after responding to a verbal summons by intelligence services or revolutionary courts.[25]

7.7 The Committee notes the State party's observation that even if the complainant had demonstrated that he had left the Islamic Republic of Iran illegally and that his asylum application had been brought to the attention of the Iranian authorities, this would not be sufficient to substantiate the risk of torture or persecution for him if he were returned to the Islamic Republic of Iran. The Committee considers, however, that the information provided by the complainant demonstrates that Iranian nationals who left the country illegally and unsuccessfully sought asylum abroad face the risk of being subjected to persecution and ill-treatment.[26] In this regard, the Committee notes that the State party has not refuted the complainant's allegation that, on 22 July 2013, the Iranian Public Prosecutor stated that

[18] A/69/356, para. 16.

[19] *K.N., F.W. and S.N.* v. *Switzerland*, para. 7.6.

[20] A/HRC/25/61, paras. 2, 4, 27–32 and 52–57; and A/25/75, paras. 7, 17–20 and 43.

[21] A/HRC/25/26, paras. 7 and 43.

[22] A/HRC/25/61, paras. 5 and 84.

[23] See para. 4.4 above.

[24] Communication No. 41/1996, *Kisoki* v. *Sweden*, Views adopted on 8 May 1996, para. 9.3; and *K.N., F.W. and S.N.* v. *Switzerland*, para. 7.7.

[25] A/HRC/25/61, para. 29.

[26] See para. 5.8 above.

Iranians who had left the country in connection with the 2009 protests would be arrested and prosecuted upon return.[27] The Committee also takes into consideration the reports by the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran on the lack of progress by the Iranian authorities in ending harassment, intimidation, persecution and arbitrary detention of political opponents, including students, in connection with the mass demonstrations following the 2009 elections.[28]

7.8 The Committee also notes that the State party has not addressed the complainant's argument regarding the death sentence that he might face if he were returned to the Islamic Republic of Iran, for his adoption of atheistic and agnostic views, which might be interpreted by the Iranian authorities as abandonment of Islam.[29] It also observes that recent reports by the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran and by the Secretary-General indicate that low-level opposition activists, including university students, are closely monitored in the Islamic Republic of Iran, and that political opponents, human rights defenders, journalists and members of religious minorities are arrested, charged, prosecuted and convicted for national security crimes or crimes of a political nature.[30] It further notes that, according to official reports, the Iranian authorities engage in extensive attempts to identify and to sanction, including by the death sentence, Iranian citizens who insult Islam or criticize the Iranian Government on the Internet.[31] It considers, therefore, that the complainant, in the light of his expulsion from university, participation in the 2009 protests, illegal departure from the Islamic Republic of Iran, failed asylum application abroad and religious views, would most likely attract the attention of the authorities upon return to his country of origin, thus significantly increasing the risk of him being arrested, tortured and sentenced to death, if he were returned.

7.9 Accordingly, the Committee considers that substantial grounds exist for believing that the complainant would be in danger of being subjected to torture if he were returned to the Islamic Republic of Iran. Furthermore, the Committee notes that, since the Islamic Republic of Iran is not a party to the Convention, the complainant would be deprived of the legal option of recourse to the Committee for protection of any kind, if he were to be deported to the Islamic Republic of Iran.[32]

8. In the light of the above, the Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the complainant's deportation to the Islamic Republic of Iran would constitute a violation of article 3 of the Convention.

9. The Committee is of the view that the State party has an obligation to refrain from forcibly returning the complainant to the Islamic Republic of Iran or to any other country where he runs a real risk of being expelled or returned to the Islamic Republic of Iran. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee invites the State party to inform it, within 90 days of the date of transmittal of the present decision, of the steps that it has taken in response to the present decision.

---

[27] See para. 5.8 above.

[28] A/68/503, para. 30; and General Assembly resolution 64/176, para. 2 (h).

[29] See para. 5.8 above.

[30] A/HRC/25/61, paras. 88–90; and A/68/503, paras. 6–15 and 88–90.

[31] A/67/369, paras. 15–18.

[32] See, for example, *K.N., F.W. and S.N.* v. *Switzerland*, para. 7.8.